Buffalo Law Review

Volume 6 | Number 1 Article 30

10-1-1956

Criminal Law—Coram Nobis—Right to Hearing

Paul Shatkin

defendant's handwriting were found in his desk, that enough was proven for conviction.

The *Goldstein* case has what the Court is looking for and what was missing in the instant case—a concrete piece of evidence which logically connects the circumstantial evidence to the crime, to wit: the overheard conversation and policy slips in the one case, and the lack of proof that any of the names mentioned were names of horses running that day together with sketchy identification of the overheard voices as being those of the defendants in the instant case.

Appeal from Dismissal of Information

In *People v. Levenstein*[64] it was held that the state may appeal where a demurrer is sustained and an information dismissed by a Court of Special Sessions. Though the County Court had dismissed the appeal on the ground there was no statutory right of appeal,[65] the Court of Appeals reasoned that "indictment" in section 518 of the Code of Criminal Procedure included "information".

By amendment in 1954, section 518 was incorporated into section 750 of the Code of Criminal Procedure by reference, specifically making the provisions of section 518 applicable to courts of special session. Since courts of special session proceed by way of *information* and not *indictment* the Legislature must have intended *indictment* to include *information.* The 1954 amendment was meaningless otherwise.

Such reasoning is consistent with earlier Appellate Division rulings that the sustaining of a demurrer to an information is appealable.[66] This tends to promote the legislative policy of a uniform procedure in criminal cases.

Coram Nobis—Right to Hearing

In *People v. Lain*[67] denial of a hearing on a writ of error coram nobis was reversed upon defendant's sworn allegation that he was not advised of his right

64. 309 N. Y. 433, 131 N.E. 2d 719 (1956).

65. N. Y. CODE CRIM. PROC. §518: An appeal to an appellate court may be taken by the people in the following cases: 1. From a judgment for the defendant, on a demurrer to the indictment . . . .

66. *People v. Hammerstein,* 150 App. Div. 212, 134 N. Y. Supp. 730 (1st Dep't 1912); *People v. Firth,* 157 App. Div. 492, 142 N. Y. Supp. 634 (2d Dep't 1913).

67. 309 N. Y. 291, 130 N.E. 2d 105 (1955).

to counsel.[68] The Court held he was entitled to a hearing as to the truth of such allegations.

But denial of a hearing on a writ of error coram nobis was affirmed in *People v. White*,[69] notwithstanding the petitioner's sworn allegation that he was induced to plead guilty to second-degree larceny by the fraudulent misrepresentation of the assistant district attorney and the sentencing judge.

The *Lain* case affirmed the doctrine that a petitioner upon a writ coram nobis who swears to an allegation that he was not advised of his right to counsel is entitled to a hearing in open court unless his claims are conclusively refuted by unquestionable documentary proof.[70] Therein it was held that the fact that one lawyer filed a notice of appearance two days after a guilty plea, but was not heard from in the record again, and that another lawyer repeated an answer given by defendant, was not conclusive. Scant entries on the official record do not conclusively disprove a sworn allegation that defendant was never told of his right to counsel.[71]

There is evidence that the assistant district attorney made representations in the *White* case that petitioner would be sentenced as a second-felony offender rather than a fourth offender upon a plea of guilty, but because of subsequent actions of petitioner and his counsel prior to sentencing there was deemed no reliance upon such representations. Petitioner by affidavit acknowledged that prior to sentence he abandoned reliance upon the so-called agreement. The court supported this position by pointing to notations in the indictment and the minutes of the hearings.

The court further noted that the request of the judge for executive clemency upon sentencing did not amount to a guaranty of executive clemency, but merely a conclusion, representing the opinion of the defendant. In denying a hearing, the court held that bare allegations not confirmed by recorded facts are insufficient in law to warrant the granting of a hearing, and the defendant was not entitled to a hearing on a charge lacking factual support. They also found the record convincingly demonstrated the falsity of the allegation.

Though the *Lain* and *White* cases are quite different factually, the basic principles governing each must be the same. Coram nobis is the appropriate

68. N. Y. CODE CRIM. PROC.: §188 When the defendant is brought before a magistrate . . . the magistrate must inform him of the charge . . . and his right to aid of counsel . . . . §308 If a defendant appears for arraignment without counsel, he must be asked if he desires the aid of counsel, and if he does the court must assign counsel . . . .

69. 309 N. Y. 636, 132 N.E. 2d 880 (1956).

70. *People v. Richetti*, 302 N. Y. 290, 97 N.E. 2d 105 (1951).

71. *People v. Guariglia*, 303 N. Y. 338, 102 N.E. 2d 580 (1951).

method of correcting a result inconsistent with due process of law. It is the proper remedy for a court to reopen its judgment where the same was based on trickery, deceit, coercion or misrepresentation in the procurement of a plea,[72] and where a defendant has not been advised of his right to counsel.

It is apparent from the reading of these two cases that they are inconsistent. The *Lain* case says a hearing will be granted upon a sworn allegation unless "conclusively refuted by unquestionable documentary proof,"[73] while the *White* case requires the sworn allegation be supported by "recorded fact" before a hearing will be granted. One says a hearing will only be denied where "refuted" by the record, while the other requires "support" in the record before a hearing will be forthcoming.

Furthermore, the *Lain* case affirms the proposition that scant entries on official records do not disprove sworn allegations, while in *White* it was determined that excerpts and notations from the clerk's records were "conclusive" to disprove the allegations.

In determining that the "guaranty" of executive clemency was merely an opinion, as evidenced by the judge's statement at sentencing, the court in the *White* case ignored the possibility that such a guaranty had been verbally made to the defendant prior to sentencing and in reliance thereon he did not withdraw his plea of guilty. After sentencing a defendant is precluded from withdrawing a plea of guilty.[74] Such an error would not appear in the record, vitiating any right of appeal. As a result, the only remedy available is coram nobis if defendant is not to be denied due process of law.

Therefore it appears that the dissent of Judge Desmond is correct, and it is impossible to reconcile the *White* decision with the precedents. Possibly this case is a sign of judicial policy to restrict hearing upon a writ of coram nobis as far as possible and thereby combat the flood of such petitions plaguing the courts causing a wealth of litigation thereunder. It may be argued that this procedure has been a green light, opening the gates of our prisons and unleashing hardened criminals upon the unwary public. But state action must be consistent with the fundamental principles of liberty and justice. The public safety is ultimately insured by the protection of the rights of the individual.

---

72. *Lyons v. Goldstein*, 290 N. Y. 19, 47 N.E. 2d 425 (1943).
73. *People v. Langen*, 303 N. Y. 474, 104 N.E. 2d 861 (1952).
74. N. Y. CODE CRIM. PROC.: §337 The court may in its discretion at any time before judgment on a plea of guilty, permit it to be withdrawn . . . .